

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 94-5622

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ROGER LEWIS SMYRE, a/k/a Red,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Graham C. Mullen, District Judge. (CR-93-36)

Submitted: April 15, 1996

Decided: April 22, 1996

Before ERVIN and MOTZ, Circuit Judges, and CHAPMAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

David Wall Minor, Statesville, North Carolina, for Appellant. Mark T. Calloway, United States Attorney, H. Thomas Church, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Roger Lewis Smyre pled guilty to distributing crack cocaine. He was sentenced to 140 months incarceration, four years of supervised release, and a \$50 special assessment. Smyre noted a timely appeal. Counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), stating that in his view there exist no meritorious grounds for appeal. Smyre filed a supplemental brief claiming that the district court erred by denying his request to substitute his counsel due to an alleged conflict of interest and he was denied the effective assistance of counsel. Smyre's claims cannot be reviewed on direct appeal. United States v. DeFusco, 949 F.2d 114, 120-21 (4th Cir. 1991), cert. denied, 503 U.S. 997 (1992).

We have examined the entire record in this case in accordance with the requirements of Anders, supra, and find no meritorious issue for appeal. Counsel has moved to withdraw from further representation. The court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court at that time for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client. We therefore deny counsel's motion to withdraw at this stage of the proceedings. We further deny Smyre's motion to substitute his attorney. We affirm the district court's judgment order. We dispense with oral argument

because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED